

# **CITY OF HAYWARD**

## **AGENDA REPORT**

AGENDA DATE 02/27/01

AGENDA ITEM 4

WORK SESSION ITEM       

**TO:** Mayor and City Council

**FROM:** Director of Public Works

**SUBJECT:** Proposed Ordinance to Recycle Construction and Demolition Debris

### **RECOMMENDATION:**

It is recommended that the City Council introduce the attached ordinance requiring recycling of construction and demolition debris from certain projects.

### **BACKGROUND/DISCUSSION:**

Assembly Bill 939 requires that cities divert at least 50 percent of the waste sent to landfill in 1990. Hayward has implemented a number of programs to meet this diversion goal. A successful single-family residential curbside recycling program for typical recyclable materials has been in place since 1992. Curbside collection of single-family yard waste was initiated in 1997. Multi-family residential facilities provide recycling services to their tenants. The City also offers Christmas tree recycling each year and bulky items (appliances, furniture, tires, and scrap metal) can be picked up for recycling annually in conjunction with the curbside Clean-Up Program. A pilot paper recycling program for Hayward businesses was also implemented, but did not have a significant impact on the City's diversion rate. All of the aforementioned programs have resulted in a diversion rate in the low 40s percent.

Construction and demolition (C&D) debris is a significant component of the waste stream in Hayward, particularly as construction activities have increased over the past few years. Recyclable C&D debris includes asphalt, concrete, brick/masonry/tile, unpainted wood, doors and windows, corrugated cardboard, dirt/clean fill, drywall, carpet and padding, and scrap metals. Based on data provided by the Alameda County Waste Management Authority (ACWMA), staff estimates that about 20,000 tons of these types of materials were disposed of from the City of Hayward in 1998. Many jurisdictions in Alameda County, including Hayward, have been working with building contractors and developers to assist and encourage them in recycling as much C&D debris as is reasonably possible. In addition to this voluntary effort, the Cities of Oakland and Dublin have implemented ordinances requiring that at least 50% of the C&D debris generated by certain projects be recycled or salvaged. In an effort to increase waste diversion and help bring Hayward into compliance with AB939, an ordinance to require recycling of debris from construction and demolition projects is proposed.

## Summary of Ordinance Requirements

The draft ordinance was based on a model prepared by the ACWMA and incorporates comments from Building Inspection, Planning, and the City Attorney's Office. With the exception of renovations and additions to detached single-family homes, all larger projects, i.e. projects valued at \$75,000 or more, will be covered by the ordinance. Staff believes that use of the project's valuation is the best threshold criteria for Hayward because valuation is identified at the start of a project and more easily fits into the City's current project review process. Based on a review of building permit data, the proposed valuation threshold of \$75,000 will cover a significant number of projects, but will exempt smaller projects that are not likely to generate large amounts of debris. By comparison, the City of Oakland requires compliance with its C&D Ordinance for all projects with valuation of \$50,000 or higher, except for single-family residential renovations and additions. The City of Dublin uses \$100,000 valuation as a threshold.

The draft ordinance requires that all concrete and asphalt be recycled, and that 50%, by weight, of the balance of the C&D debris generated by the project also be recycled. Almost all concrete and asphalt can be easily recycled since the markets for those materials are stable and are expected to continue to remain viable. In fact, nearly all concrete and asphalt are currently recycled. The balance of the materials typically generated by C&D projects include a sufficient quantity of other recyclable materials so that compliance would be reasonable. If an applicant can document a compelling reason(s) for not complying with these diversion requirements, the proposed ordinance has a provision for staff to consider these requests and provide an exemption, if warranted. All applicants, regardless of the project's size, will be encouraged to divert materials from landfill disposal.

All applicants for covered projects will be required to complete a Construction and Demolition Debris Recycling Statement, indicating estimated quantities of C&D debris that will be diverted and disposed by type of material and the vendor or facility that will collect or receive the material. A *Builder's Guide to Reuse and Recycling*, which was prepared by the ACWMA, will be provided to all applicants to assist them in locating potential resources for the disposal of specific materials. No building, demolition or other similar permit will be issued until the Recycling Statement is approved by City staff.

At the conclusion of the project, and prior to the City issuing a certificate of occupancy, a summary report will be required in order to evaluate whether the applicant complied with the ordinance. Failure to provide the documentation or failure to demonstrate a good faith effort may result in monetary penalties being assessed, as specified in the Municipal Code. The Municipal Code allows the City to assess fines as set forth in the California Government Code. Currently, a fine of up to \$100 for a first-time violation of a city ordinance is authorized in the Government Code. Second and third violations may result in fines up to \$200 and \$500, respectively. Appeals to this decision may be filed and will be evaluated by a designee of the City Manager.

### Impact on Development Projects

Every effort will be made to make the process as simple and straightforward as possible without compromising the intent and purpose of the ordinance. Debris Recycling Statement Forms and Summary Forms have been developed to assist applicants in ensuring that the information provided is complete and accurate. As noted previously, the ACWMA has prepared a *Builder's Guide to Reuse and Recycling* that lists resources throughout the Bay Area for collection and disposal of recyclable C&D debris. This guide will be provided to each applicant.

Applicants should not experience any delays in obtaining building permit applications as a result of the proposed ordinance, provided that a complete Debris Recycling Statement is submitted with the application, and that the Statement shows that 100% of all concrete and asphalt and 50% of all other materials will be recycled. Applicants that do not include a Debris Recycling Statement or submit an incomplete Statement will not be issued a building permit until the requirements have been met. Solid Waste/Recycling staff will be available to assist applicants with this process.

The *Builder's Guide to Reuse and Recycling* identifies a number of resources in Alameda County for collection and processing of separated recyclable materials, that is, materials that are sorted by type at the project site and transported to a facility equipped to process specific types of material. However, in some instances, it is most economical to accumulate a load of mixed C&D debris and haul it away in one container. There is currently no facility in the County that is designed to receive, sort and recycle mixed C&D debris. However, until such a facility is available locally, the ACWMA is providing a \$10 per ton rebate for delivery of mixed C&D loads to a more distant facility in San Jose, San Francisco, or San Rafael. The purpose of this rebate is to offset the cost of transporting the material out of county. There are certain requirements made by the ACWMA to qualify for this rebate, and staff will work with contractors and applicants to make them aware of the rebate and to help them comply with the requirements.

### Council's Environment Committee Review

Council's Environment Committee (CEC) reviewed the draft ordinance at its September 6, 2000 meeting. The CEC recommended that the City Council approve the ordinance. The draft ordinance has undergone some revision since it was presented to the CEC, specifically in Thresholds for Covered Projects. Staff had originally recommended that all projects that are 1,000 square feet or more in size be covered. However, after further discussion with other City divisions, it was determined that use of the project's valuation is the best threshold criteria for Hayward for reasons discussed earlier.

Another change since the CEC review relates to renovations and additions to single-family detached homes. Upon further discussion and review of building permit data, it was determined that these projects should be exempt from ordinance requirements because home

remodeling projects tend to generate relatively small amounts of debris and because individual homeowners who do the work themselves may find it more difficult than a professional builder to comply with the requirements of the ordinance.

### Public Notice

Public notice regarding the proposed adoption of this ordinance was published in the *Daily Review* on February 17, 2001. Notice of this proposed action, along with information about the ordinance requirements and copies of the available resources and forms, was distributed to construction and demolition contractors and architectural firms who have had projects in Hayward, building industry association representatives, homeowner's associations, recycling processors in Hayward, the Chamber of Commerce, and other affected parties.

### Comments from Building and Demolition Contractors

In response to the notice, two contractors submitted comments. Alan Lambert of Gerard Development Corporation urged that debris haulers be responsible for complying with the ordinance rather than developers or contractors because the haulers have the experience to accurately measure the tons or cubic yards of debris generated. By contrast, it is staff's opinion that it is very important that the developer or contractor retain responsibility for the proper disposition of the C&D debris generated since they are the entity to whom the building or demolition permits are issued. In that capacity, contractors are responsible for coordinating compliance with all of the requirements or procedures issued by City staff. Contractors will receive instructions to complete the Debris Recycling Statement as well as a table listing the common construction materials and their conversion rates in order to estimate weight if volume is known and vice versa.

The second contractor, Layne Christensen Company, offered suggestions for revising the Debris Recycling Statement in order to allow developers and contractors to complete a statement or summary relating to their respective portion of the project. Staff will review these suggestions prior to finalizing the Debris Recycling Statement.

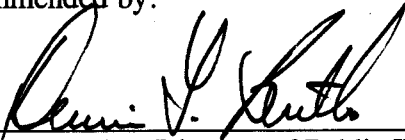
Two other contractors requested copies of the ordinance, though no responses were received afterwards. A citizen group responded to the notice by indicating that the ordinance is in the spirit of AB 939. Also, a recycling service provider requested that their processing site be listed for building and demolition contractors.

Prepared by:



Alex Ameri, Deputy Director of Public Works/Utilities

Recommended by:



Dennis L. Butler, Director of Public Works

Approved by:



Jesús Armas, City Manager

Attachment: Exhibit A - Proposed Construction and Demolition Debris Recycling Ordinance

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF HAYWARD  
ADDING ARTICLE 10 TO CHAPTER 5 OF THE HAYWARD  
MUNICIPAL CODE RELATING TO WASTE REDUCTION  
AND RECYCLING REQUIREMENTS FOR CONSTRUCTION  
AND DEMOLITION DEBRIS

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. The following provisions are hereby adopted and added to Chapter 5 of the Hayward Municipal Code as Article 10:

"ARTICLE 10

CONSTRUCTION AND DEMOLITION DEBRIS WASTE REDUCTION AND  
RECYCLING REQUIREMENTS

Section 5-10.01 PURPOSE. This Article is adopted in order to supplement the provisions of the California Integrated Waste Management Act of 1989 which requires that each local jurisdiction in the state Divert 50% of discarded materials from landfills by December 31, 2000 and aid in compliance with the Alameda County Waste Reduction and Recycling Act of 1990 (Measure D). Since construction and demolition debris has, in past years, constituted as much as 16% of the materials deposited in Alameda County landfills, the City has identified such debris and waste a significant target for reduction and recycling. The intent of this Article is to Divert building materials from landfills, and process and return the materials into the economic mainstream, thereby conserving natural resources and stimulating markets for recycled and salvaged materials.

Section 5-10.02 DEFINITIONS.

For the purposes of this Article, the following definitions shall apply:

a. "Applicant" shall mean any individual, firm, limited liability company, association, partnership, the State, any political subdivision and/or agency of the State, any government agency, municipality, county, city, chartered city or county, school district, community college district, industry, business, public or private corporation or any other entity who applies to the City for permits to undertake any construction, demolition or renovation Project within the City that is subject to this Article.

b. "Construction" means the building of any structure or portion thereof, including, but not limited to, improvements to or remodeling or repair of an existing facility or structure.

c. "Construction and Demolition Debris", "C&D Debris" and "Construction Debris" means used or discarded materials removed from the premises during construction or renovation of a structure resulting from construction, remodeling, repair, improvement, or demolition operations on any pavement, street, driveway, house, building, or other structure or improvement regardless of the nature of such structure or improvement.

d. "Conversion Rate" means the rate set forth in the standardized Conversion Rate Table approved by the City pursuant to this Article for use in estimating the volume or weight of materials in a Debris Recycling Statement.

e. "Debris Recycling Statement" means the completed DRS Form approved by the City for the purpose of assuring compliance with this Article submitted by the Applicant for any affected or non-affected Project.

f. "Debris Recycling Statement Compliance Officer" means the Director of Public Works or his/her designee. The Debris Recycling Statement Compliance Officer shall be the individual responsible for implementing this Article.

g. "Demolition" means the destroying, razing, tearing down or wrecking of any pavement, street, driveway, house, building, or other structure or improvement regardless of the nature of such structure or improvement whether in whole or in part, whether interior or exterior.

h. "Divert" means to use material for any purpose other than disposal in a landfill or incineration facility. Methods of Diverting materials from landfills shall include reuse, recycling, and salvage.

i. "Diversion Attainment" means the diversion of 100% of the asphalt, concrete and similar material, and at least 50%, by weight, of the total of all other C&D Debris generated by an affected Project.

j. "Hearing Officer" means the City Manager or designee.

k. "Project" means any activity which requires an application for a building permit, demolition permit, encroachment permit or other similar permit from the City.

l. "Recycling" means the process of collecting, sorting, cleansing, treating, and/or reconstituting of materials that would otherwise become solid waste, and returning them to the economic mainstream in the form of raw material for new, reused or reconstituted products which meet the quality standards necessary to be used in the marketplace.

m. "Renovation" means any change, addition or modification in an existing structure or improvement.

n. "Reuse" means further or repeated use of Construction or Demolition Debris in the same or different form.

o. "Salvage" means the controlled removal of C&D Debris from a permitted building or demolition site for the purposes of recycling, reuse or storage for later recycling or reuse.

p. "Source Separated" means recyclables that have been segregated from solid waste, by or for the generator, on the premises where they were generated, for handling different from that of solid waste.

q. "Summary Report" means the report to be submitted to the Debris Recycling Statement Compliance Officer at the conclusion of any affected Project.

r. "Targeted Materials" means the C&D Debris listed in the Debris Recycling Statement that could potentially be reused, recycled or salvaged.

#### Section 5-10.03 THRESHOLDS FOR COVERED PROJECTS

The provisions of this Article shall apply to all construction, demolition and/or renovation projects, except as described in the following paragraph, within the City with a permit valuation in excess of \$75,000 as determined by the City's Building Official or designee. The total cost established by this section shall be adjusted every five years, beginning in the year 2006 to reflect an increase or decrease in the cost of construction due to inflation or deflation.

Renovations, additions, alterations, and repairs to existing single-family detached residential units shall not be considered covered projects under this Ordinance, regardless of permit valuation of the project. Renovations, additions, alterations, and repairs to all residential properties, other than single-family detached units, and to all non-residential properties shall be considered covered projects if the permit valuation exceeds \$75,000

#### Section 5-10.04 NON-COVERED PROJECTS

Applicants for Projects that do not meet the threshold requirements set forth in Section 5-10.03 shall be encouraged to meet Diversion Attainment described herein.

#### Section 5-10.05 COMPLIANCE AS CONDITION OF APPROVAL

Compliance with the provisions of this Article shall be included as a condition of approval on all building and/or demolition permits issued for Projects that meet or exceed the thresholds set forth in this Article.



#### Section 5-10.06 SUBMISSION OF DEBRIS RECYCLING STATEMENT

Applicants for building or demolition permits involving Projects covered by this Article shall complete and submit a Debris Recycling Statement (DRS) on a form approved by the City. Such DRS form shall be provided to the Applicant by the City as part of the permit application package. The completed DRS form shall include and indicate all of the following:

- a. the estimated volume or weight of the C&D Debris, by type of material generated;
- b. the estimated volume or weight of materials that can feasibly be Diverted via reuse or recycling;
- c. the vendor or facility that the Applicant proposes to use to collect and/or receive the Diverted material;
- d. the estimated volume or weight of materials that will be deposited in a landfill.

For the purposes of this section, the Applicant shall use standardized Conversion Rates, approved by the City, to estimate the volume and weight of materials identified in the DRS.

#### Section 5-10.07 REVIEW OF DEBRIS RECYCLING STATEMENT

A. Timeframe for Review: The Debris Recycling Statement Compliance Officer will review the DRS and advise the Applicant within five days of receipt of the DRS of his/her decision regarding approval or non-approval.

B. Approval of Debris Recycling Statement: Notwithstanding any other provision of this Code, no building, demolition or similar permit shall be issued unless and until the Debris Recycling Statement Compliance Officer has approved the DRS for the Project. Approval shall not be required, however, where a determination has been made by the City that emergency demolition is necessary to protect public health or safety. A DRS shall only be approved if the Debris Recycling Statement Compliance Officer determines that the following conditions have been met:

- (1) The DRS provides all of the information required by this Article; and
- (2) The DRS indicates that 100% of the asphalt, concrete and other similar material, and at least 50%, by weight, of all other C&D Debris generated by the Project will be Diverted; or
- (3) The DRS indicates that 100% of the asphalt, concrete and similar materials will be Diverted, and demonstrates good cause as to why at least fifty percent (50%) by weight of the remainder of the C&D Debris generated by the Project will not be Diverted.

If the Debris Recycling Statement Compliance Officer determines that the DRS has met condition (1) and either condition (2) or (3) set forth above, the DRS shall be marked "Approved". A copy of the approved DRS shall be returned to the Applicant and the Building Division shall be notified that the DRS has been approved.

**B. Non-Approval of Debris Recycling Statement** If the Debris Recycling Statement Compliance Officer determines that condition (1), or either (2) or (3) has not been met, he or she shall either return the DRS to the Applicant requesting full documentation of the reasons that the requirements set forth herein cannot be met, or return the DRS to the Applicant marked "Denied". If the DRS is returned marked "Denied", it shall be accompanied by a statement of reasons for the denial. Once the Building Division is notified that a DRS has been denied, it shall not issue the permit for the project for which the DRS has been submitted until it has been notified that a DRS has been approved.

#### **Section 5-10.08 SUBMISSION OF A COMPLETED SUMMARY REPORT**

At the conclusion of every Project subject to this Article, and prior to issuance of a temporary or final certificate of occupancy by the City, the Applicant shall submit to the Debris Recycling Statement Compliance Officer a Summary Report that contains all of the following documentation:

- (a) The actual volume or weight of C&D Debris that was Diverted and was not Diverted by type of material, and the Diversion method used by Applicant; and
- (b) A copy of the previously approved DRS for the Project; and
- (c) The vendor or facility that the Applicant utilized to collect and receive the Diverted material; and
- (d) A description of any barriers that were encountered.

#### **Section 5-10.09 WEIGHING OF C&D DEBRIS**

Applicants shall make every reasonable effort to assure that all C&D Debris Diverted and/or deposited in a landfill is measured and recorded using the most accurate method of measurement available. To the extent possible, all C&D Debris shall be weighed by measurement on scales. Such scales shall be in compliance with all regulatory requirements for accuracy and maintenance. A volumetric measurement shall be used for all C&D Debris for which weighing is not practical due to small size or other considerations. Volumetric measurements shall be converted to weight by using the standardized Conversion Rates approved by the City for this purpose.

#### Section 5-10.10 DETERMINATION OF COMPLIANCE

The Debris Recycling Statement Compliance Officer shall review the completed Summary Report submitted pursuant to Section 5-10.08 to determine whether the Applicant has Diverted 100% of the asphalt, concrete and similar material, and at least 50%, by weight, of the total of all other C&D Debris generated by the Project. Such determination shall be based upon this Article and the implementing guidelines adopted by the City as follows:

(a) The Applicant shall be found to have achieved a "Diversion Attainment" if (1) 100% of the asphalt, concrete and similar material generated by the Project has been Diverted and appropriate documentation as required by this Article has been provided to the City; and (2) at least 50%, by weight, of the remainder of the C&D Debris generated by the Project has been Diverted and appropriate documentation as required by this Article has been provided to the City.

(b) When the Applicant has not achieved Diversion Attainment for a Project, the Debris Recycling Statement Compliance Officer shall determine if such Applicant has made a good faith effort to comply with the requirements of this Article. In making this determination, consideration may be given to information submitted by the Applicant, the availability of markets for the C&D Debris that was not Diverted, the size and nature of the Project, the documented efforts of Applicant to Divert C&D Debris and the barriers encountered. If the Applicant is determined to have made a good faith effort to comply with the C&D Diversion and documentation provisions herein above set forth, further compliance with this Article shall be excused.

(c) An Applicant shall be in a "Non-Attainment" status if it is determined that (1) 100% of the asphalt, concrete and similar material generated by the Project was not Diverted; (2) that 50% of the remainder of the C&D Debris was not Diverted; and (3) that a good faith effort was not made, or if the Applicant fails to submit the documentation required by this Article.

#### Section 5-10.11 CITY'S RIGHTS TO MONITOR AND INSPECT

The City shall have the right to inspect all Projects subject to this Article to determine levels of actual Diversion activities and validate the information contained in the DRS and Summary Report. Upon request by the City, Applicant shall provide documentation, papers and records relating to the disposal of C&D Debris for an affected Project.

#### Section 5-10.12 SUPPORTING DOCUMENTATION

Applicants shall retain receipts and weight tags for the quantities of materials reused, salvaged, recycled and deposited in a landfill as indicated in the Summary Report for a period of one year following the final inspection and issuance of a temporary or final certificate of occupancy. Applicant shall make such records available to the City for inspection and copying upon request.

### Section 5-10.13 TARGETED MATERIALS

In furtherance of the goals established by this Article, the Director of Public Works may, from time to time, change the C&D Debris materials targeted for Diversion based upon local markets and conditions.

### Section 5-10.14 APPEALS

An Applicant may appeal a decision of the Debris Recycling Statement Compliance Officer by initiating the following procedure:

- (a) Within ten calendar days after the date of a written decision, an appeal in writing must be filed with the Debris Recycling Statement Compliance Officer. The appeal shall be on a form prescribed by the Debris Recycling Statement Compliance Officer and shall state specifically, and in detail, the error or action which is being appealed.
- (b) Within ten working days of receipt of the appeal, the City Manager shall appoint a hearing officer. The Hearing Officer shall schedule a time and date, provide the Applicant a minimum of ten days written notice and conduct a hearing on the appeal.
- (c) In deciding the appeal, the Hearing Officer shall consider the evidence provided by the Applicant, the Debris Recycling Statement Compliance Officer, and any other information he/she feels relevant to the disputed issue. In rendering a decision, the Hearing Officer shall consider and give considerable weight to purpose and intent of this Article.
- (d) Within 14 working days of the completion of the hearing, the Hearing Officer shall render a written decision either affirming, modifying or reversing the decision of the Debris Recycling Statement Compliance Officer. The decision of the Hearing Officer shall be final.

### Section 5-10.15 PENALTY

Violations of any of the provisions of this Article shall be infractions subject to the provisions of Section 1-3.00(e) of this Code.

Section 2. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part hereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause and phrase of this Ordinance irrespective of the fact that one or more of them would be declared unconstitutional or invalid. To this end, the provisions of this Ordinance are declared to be severable.

Section 3. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall be effective 30 days from and after the date of its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the \_\_\_\_\_ day of \_\_\_\_\_, 2000 by Councilmember \_\_\_\_\_.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the \_\_\_\_\_ day of \_\_\_\_\_, 2000, by the following votes of members of said City Council.

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED: \_\_\_\_\_

BY: \_\_\_\_\_  
Mayor of the City of Hayward

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward